

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1352 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

EMPLOYEES' STATE INSURANCE CORPORATION

Versus

RAMANBHAI ASHABHAI PATEL

Appearance:

MR SR SHAH for Petitioner

MS ASHA H GUPTA for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 15/09/97

ORAL JUDGEMENT

1. The ESIC has aggrieved by the judgment and order passed by the ESI court in Appeal No.3/91 whereby it has allowed the appeal of the employee against the decision of the medical board dated 1.2.1991.

2. It appears that the employee was working with Dinesh Mills and on 29.10.1990 while in discharge of his

duties a portion of his hand got crushed and on the left hand he received injuries which are more particularly described in the opinion of the Medical Board. Because of the injuries received his fingers have become stiff, practically having no movement and the medical board assessed his disability at 30%. The employee was not satisfied thereby because according to him the disability was nearly total or it would work out to 90% disability and that the medical board was not correct in assessing the disability at 30%. The ESI court has seen the living victim of the accident and Miss Asha Gupta has put this court under that exercise by exhibiting the employee before this court and calling upon him to perform certain acts which according to her the living victim can not perform. She has with all ability at her command tried to argue before this court that in fact the injured hand has become absolutely useless so as to rehabilitate the employee from the work he was performing though undoubtedly she agreed that some lighter work is assigned to him namely that of sweeping. Once again, as is usually done to evoke the sympathy of the court and rightly so she suggested to the court that there is distinction between the work which the employee was performing and the sweeping work which he is now asked to perform. She, therefore submitted before this court that the disability which was assessed by the ESI Court at Baroda at 90% was just and proper and that the judgment and order of the ESI court should be maintained.

2. Mr.S.R.Shah, Ld.counsel appearing for the ESIC has, on the other hand, submitted that the court shall have to follow the second schedule of the Act in order to find out the percentage of disability and it is not a case where there was total loss of hand or that the hand of the employee has been amputated from the joint of shoulder so that it could be considered to be loss of limb. In his submission it could, at the most, be said to be case of partial disability, though permanent in nature, but it was not total which would render the corporation liable to extent of 90%. In the case of loss of four fingers of one hand disability under the schedule is 50% while in the case of loss of three fingers of one hand it is valued at 30%. It is undoubtedly true that it is not total loss of hand and from the living exhibit which is produced before this court also this court found that there is partial permanent disability which makes the movement of hand somewhat difficult. Taking overall view of the matter and little leeway for little guess work which is not as good as the guess work in compensation cases in motor accident cases, in my opinion the disability of the employee could be assessed at 70%

and the corporation could be directed to make payment accordingly. Rest of the award is maintained. The corporation is directed to make the payment of the awarded amount as per the practice within a period of three months from today. Appeal stands allowed to the aforesaid extent. No costs.

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